

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

-----	X
IN RE ENRON CORPORATION	:
SECURITIES LITIGATION	: MDL 1446
-----	:
This Document Relates To:	:
	:
MARK NEWBY, et al., Individually and	:
On Behalf of All Others Similarly Situated,	:
	:
Plaintiffs,	:
v.	: Consolidated, Coordinated
ENRON CORP., et al.,	: and Related Civil Actions
	:
Defendants.	: Case No.: H-01-CV-3624
-----	:
THE REGENTS OF THE UNIVERSITY OF	:
CALIFORNIA, et al., Individually and On	:
Behalf of All Others Similarly Situated,	:
	:
Plaintiffs,	:
v.	:
	:
KENNETH L. LAY, et al.,	:
Defendants.	:
-----	X

**APPENDIX TO BANK DEFENDANTS' MOTION TO LIFT  
DEFENDANT KENNETH RICE'S STAY OF DISCOVERY**

7/2/05

## EXHIBITS

Description	Exhibit
Cooperation Agreement, <i>United States v. Rice</i> , No. CR-H-03-93-01 (S.D. Tex. July 30, 2004)....	1
Fourth Superseding Indictment, <i>United States v. Rice</i> , No. CR-H-03-93-01 (S.D. Tex. July 22, 2004).....	2

## **EXHIBIT 1**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Department of Justice by the Enron Task Force ("the Department") and Kenneth Rice ("Defendant") agree to the following (the "Agreement"):

or time previously served on post-release supervision  
(18 U.S.C. §§ 3583 (b) & (c))

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- d. Maximum fine: \$1,000,000 or twice the gain or loss  
(15 U.S.C. § 78ff; 18 U.S.C. § 3571(d))
- e. Restitution: As determined by the Court pursuant to statute  
(18 U.S.C. §§ 3663 and 3663A)
- f. Special Assessment: \$100  
(18 U.S.C. § 3013)

#### Sentencing Guidelines

2. The Defendant agrees that his sentence is governed by the United States Sentencing Guidelines (the "Guidelines"). Additionally, the defendant (a) waives any right to have facts that determine the offense level<sup>1</sup> under the Guidelines alleged in an indictment and found by a jury beyond a reasonable doubt, (b) agrees that the facts that determine the offense level will be found by the court at sentencing by a preponderance of the evidence, unless it is determined that this burden of proof cannot be waived, and that the court may consider any reliable evidence, including hearsay, and (c) waives any constitutional challenge to the validity of the Guidelines. The parties agree that Defendant's sentence is governed by the November 2000 Sentencing Guidelines Manual and that U.S.S.G. § 2F1.2 governs the determination of the applicable offense level and sentence, capped by the statutory maximum of 120 months. The Department agrees, based on information known to it on the date of this Agreement, that it will not oppose a downward adjustment of three levels for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1.

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<sup>1</sup>The term "offense level" includes the base offense level plus all specific offense characteristics, enhancements and adjustments.

3. The Department will advise the Court and the Probation Office of information

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relevant to sentencing, including criminal activity engaged in by Defendant, and all such information may be used by the Court in determining Defendant's sentence. Defendant understands that the parties' positions regarding the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge.

Waiver of Rights

4. Defendant will not appeal or collaterally attack his conviction or guilty plea. Defendant does not waive his right to appeal or collaterally attack his sentence based upon the law at the time of his sentencing.

5. Defendant waives all defenses based on venue (but reserves the right to request a change of venue if his plea is vacated or plea withdrawn), speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed, in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn.

6. Defendant understands that by pleading guilty he is waiving important rights including: (a) the right to persist in his previously entered plea of not guilty; (b) the right to a jury trial with respect to guilt or sentencing; (c) the right to be represented by counsel - and if necessary to have the court appoint counsel to represent him - at trial and at every other stage of the proceedings; (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and (e) the right to additional discovery and disclosures from the

Department. Defendant waives any right to additional disclosure from the Department in connection with his guilty plea.

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**Defendant's Obligations**

7. Defendant will provide truthful, complete, and accurate information to and will cooperate fully with the Department, both before and after he is sentenced. This cooperation will include, but is not limited to, the following:

- a. Defendant agrees to make himself available at all meetings with the Department and to respond truthfully and completely to any and all questions put to him, whether in interviews, before a grand jury, or at any trial or other proceeding.
- b. Defendant waives all claims of attorney-client privilege related to communications with any counsel for Enron in his capacity as an officer and employee of Enron.
- c. Defendant agrees to provide any and all documents and other material that may be relevant to the investigation and that are in his possession or control.
- d. Except as required by law, Defendant agrees not to reveal any information derived from his cooperation to any third party (other than his counsel) without prior consent of the Department, and hereby instructs his attorneys to do the same. Defendant agrees to inform the Department of any attempt by any third party to interview, depose, or communicate in any way with him regarding this case, his cooperation, or any other information related to Enron or transactions involving Enron.
- e. Defendant agrees to testify truthfully at any grand jury, court, or other proceeding as directed by the Department.
- f. Defendant consents to adjournments of his sentencing hearing as requested by the Department and agrees that his obligations under this Agreement continue until the Department informs him in writing that his cooperation is concluded. Nothing in this paragraph pertains to the date that the Defendant may be required to report or surrender to the Bureau of Prisons or United States Marshal's Service in order begin the incarceratory portion of any sentence.

8. The Department and Defendant agree that Defendant's counsel may be present at any meetings or debriefings between Defendant and the Department, and the Department will endeavor to provide reasonable notice of such meetings or debriefings, but counsel's presence is not required and, if necessary, Defendant agrees to be present and cooperate notwithstanding his counsel's unavailability.

9. Defendant agrees not to accept remuneration or compensation of any sort, directly or indirectly, for the dissemination through books, articles, speeches, interviews, or any other means, of information regarding his work at Enron or the investigation or prosecution of any civil or criminal cases against him.

#### The Department's Obligations

10. The Department agrees that, except as provided in paragraphs 1, 5 and 22 (breach of agreement), no further criminal charges will be brought against Defendant for any act or offense in which he engaged in his capacity as an officer and employee of Enron. The Department further agrees that, after sentencing of the Defendant, it will move to dismiss the remaining counts of the Fourth Superseding Indictment and any underlying indictments with prejudice.

11. The Department further agrees that no statements made by Defendant during the course of his cooperation will be used against him in any criminal proceedings instituted by the Department, except as provided in paragraphs 1, 3, 5 and 22.

12. The Department agrees that, provided Defendant fulfills the financial obligations imposed by this Agreement, it will recommend that no additional fine, forfeiture or restitution be ordered by the Court against Defendant at the time Defendant is sentenced. The Department



agrees that this amount is appropriate and fully satisfies the fine, forfeiture and restitution

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provisions of the law. Defendant understands that the Department's recommendation is not binding on the Court or the Probation Department, and the Court may order Defendant to pay an additional fine, forfeiture or restitution notwithstanding the Department's recommendation.

Should the Court order Defendant to pay additional forfeiture sums, restitution or a fine, he will not be permitted on that basis to withdraw his guilty plea.

13. If the Department determines, in its sole and exclusive discretion, that Defendant has cooperated fully, provided substantial assistance to law enforcement authorities, and otherwise complied with the terms of this Agreement, the Department will file a motion pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e), or pursuant to Federal Rule of Criminal Procedure 35(b), with the sentencing court setting forth the nature and extent of Defendant's cooperation. In this connection, Defendant understands that a determination by the Department as to whether Defendant has cooperated fully, provided substantial assistance, and otherwise complied with this Agreement, as well as the Department's assessment of the value, truthfulness, completeness, and accuracy of the cooperation, is binding on him. Defendant agrees that, in making these determinations, the Department may consider facts learned by the Department both before and after the signing of this Agreement. The Department may or may not, in its sole and exclusive discretion, recommend to the Court a specific sentence to be imposed. Except as otherwise set forth in this Agreement, the Department will not make a promise or representation to Defendant as to what sentence will be recommended by the Department. The Department does not and cannot make any promise as to what sentence will be imposed by the Court.

**Forfeiture and Monetary Penalties**

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14. Defendant agrees to pay the special assessment of \$100 by check payable to the Clerk of the Court at or before sentencing. 18 U.S.C. § 3013(a)(2)(A); U.S.S.G. § 5E1.3.
15. Defendant agrees to forfeit the following specific assets, which have an approximate value of \$13,700,000 and constitute proceeds of the offenses to which he will plead guilty:
- (a) real property known as 7207 Last Dollar Canyon, located in Telluride, Colorado, including lot 15A titled in the name of Summit Canyon Qualified Personal Residence Trust I and Summit Canyon Qualified Personal Residence Trust II, and lot 11A titled in the name of Summit Canyon, LLC;
  - (b) a platinum, sapphire and diamond necklace, with 16 diamonds (total weight approximately 3.38 carats) and 226 sapphires (total weight approximately 15.05 carats) and a platinum, sapphire and diamond bracelet with approximately 6.65 carats of sapphires and approximately 1.68 carats of diamonds, purchased from Borsheim's Jewelry on June 15, 2000;
  - (c) One 1995 Ferrari F355 Challenge, VIN no. ZFFPR41A2S0104478, registered to Ken Rice;
  - (d) One 1999 Shelby, VIN no. 5CXSA1810XL000027, registered to Kenneth Rice;
  - (e) \$219,112.03 in Ameritrade account no. E240-052859, in the name of Kenneth D. Rice and Teresa K. Rice;
  - (f) Contents of Bank of America account no. TX4-052400/06058489373, in the name of Kenneth D. Rice and Teresa K. Rice;
  - (g) \$8,265.06 in cash and/or money market funds held in Goldman Sachs account no. 012-10733-0, in the name of Kenneth Rice;
  - (h) The contents<sup>2</sup> of Sentinel Trust account number 21-25018, in the name of Ken Rice Restricted Agency Account, including cash and/or money market funds, all securities, a partnership interest based on a \$750,000 capital contribution in BBT

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<sup>2</sup> The contents of this account do not include Manulife Financial Venture Annuity #2101902, which is reflected on the account statement but not actually held in the account.

Partners, LP, and all interest in Sternhill Partners I, L.P., a limited partnership.

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- (i) The contents of the Sentinel Trust account no. 08-25000, including all cash and/or money market funds and securities, in the name of the Ken and Teresa Rice Foundation;
- (j) The contents of Sentinel Trust, Account No. 11-25017, constituting the proceeds of the sale of the property located at 400 Elk Creek Road;
- (k) The contents of Sentinel Trust Account 11-25016, constituting the proceeds of the sale of a 2001 Ferrari 360 Challenge, VIN no. ZFFYR51800123311;
- (l) \$300,000 of Highland County FL Health Facilities Revenue Bond held in Goldman Sachs account no. 012-10733-0, in the name of Kenneth Rice;

16. Defendant agrees to entry of a money judgment against him in the amount of \$372,079.00, representing the remaining amount of criminally derived proceeds, and to substitute the following assets for forfeiture of this amount: \$372,079.00 in United States currency contained within Sentinel Trust Company Account Number 08-25001.

17. Defendant warrants that he and his wife, Teresa K. Rice are the sole owners of all of the property listed above, and agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of property covered by this agreement. Defendant's wife, Teresa K. Rice, also agrees to waive her right, title, and interest in the property forfeited under this agreement, and her execution of this waiver, a copy of which is attached hereto, is a condition precedent of this Agreement.

18. Defendant further agrees to waive all interest in any asset listed above for forfeiture in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice

of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

19. Defendant knowingly and voluntarily agrees to waive his right to a jury trial on the forfeitability of the assets identified for forfeiture, and to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment or that it violates the Ex Post Facto Clause of the Constitution.

20. Defendant agrees to take all steps as requested by the United States to pass clear title to the forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. Defendant agrees not to seek a refund from the United States Treasury of the amount that he paid in taxes in connection with the receipt of the above-listed proceeds from the offense to which he will plead guilty, and waives his right, title, and interest to the taxes paid on that amount.

#### **Bankruptcy Waiver**

21. Defendant agrees not to avoid or attempt to avoid paying any fine or restitution imposed by the Court in this proceeding through any proceeding pursuant to the United States Bankruptcy Code. Defendant waives all rights, if any, to obtain discharge or to delay payment of any fine or restitution obligation arising from this proceeding or alter the time for payment by

filing a petition pursuant to the Bankruptcy Code. Defendant stipulates that enforcement of any fine or restitution obligation arising from this proceeding by the Department is not barred or affected by the automatic stay provisions of the United States Bankruptcy Code and that enforcement of any fine or restitution obligation arising from this proceeding by the Department is a valid exercise of its police or regulatory power within the meaning of Title 11, United States Code, Section 362(b). Defendant stipulates and agrees not to institute or participate in any proceeding to interfere with, alter, or bar enforcement of any fine or restitution obligation arising from this proceeding pursuant to the automatic stay or other provision of the Bankruptcy Code in any case filed by Defendant or her creditors. Upon request of the Department, Defendant will execute a stipulation granting the Department relief from the automatic stay or other Bankruptcy Code provisions in order to enforce any fine or restitution obligation arising from this proceeding. Defendant stipulates that any fine or restitution obligation imposed by the Court in this proceeding is not dischargeable pursuant to Title 11, United States Code, Section 523 in any case commenced by Defendant or her creditors pursuant to the Bankruptcy Code. Defendant's waivers, stipulations, and agreements set forth in this paragraph are made in exchange for the Department's entering into this Agreement.

#### Breach of Agreement

22. Defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes, including but not limited to perjury, making false statements, and obstruction of justice. Should Defendant violate any provision of this Agreement, Defendant will not be released from his guilty pleas but the Department will be released from all its obligations under this Agreement, including its promise

not to prosecute Defendant for any offenses arising from his employment at Enron. Defendant agrees that, in any such prosecution, all statements and other information that he has provided at any time, including all statements he has made and all evidence he has produced during proffers, interviews, testimony, and otherwise, may be used against him, regardless of any constitutional provision, statute, rule, prior agreement, or other term of this Agreement to the contrary.

#### Hyde Amendment Waiver

23. Defendant agrees that with respect to all charges contained in the Fourth Superseding Indictment and any underlying indictments returned by the grand jury in the above-captioned action, he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, PL 105-119 (Nov. 26, 1997), and will not file any claim under that law.

#### Scope

24. This Agreement does not bind any federal, state, or local prosecuting authority other than the Department, and does not prohibit the Department or any other department, agency, or commission of the United States from initiating or prosecuting any civil, administrative, or tax proceedings directly or indirectly involving Defendant.

Complete Agreement


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25. Apart from the written proffer agreements originally dated June 3 and June 27, 2004, no promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement and none will be entered into unless memorialized in writing and signed by all parties. This Agreement supersedes all prior promises, agreements, or conditions between the parties, including the written proffer agreement. To become effective, this Agreement must be signed by all signatories listed below and in the addenda.

Dated: Houston, Texas  
July 26, 2004

ANDREW WEISSMANN  
Director, Enron Task Force

By:

  
Benton J. Campbell  
Sean M. Berkowitz  
Lisa O. Monaco  
Assistant United States Attorneys

Laurel Loomis  
Patrick Murphy  
Senior Trial Attorneys

ADDENDUM FOR DEFENDANT RICE

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I have consulted with my attorneys and fully understand all my rights with respect to the Fourth Superseding Indictment and underlying indictments. I have consulted with my attorneys and fully understand all my rights with respect to the provisions of the U.S. Sentencing Commission's Guidelines Manual which may apply in my case. I have read this Agreement and carefully reviewed every part of it with my attorneys. No promises have been made to me by the Department except as set forth in this Agreement. I understand this Agreement and I voluntarily agree to it.

  
\_\_\_\_\_  
Kenneth Rice  
Defendant


  
\_\_\_\_\_  
Date



ADDENDUM FOR DEFENSE COUNSEL

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I have fully explained to Defendant Rice his rights with respect to the pending Fourth Superseding Indictment and underlying indictments. I have reviewed the provisions of the U.S. Sentencing Commission's Guidelines Manual and I have fully explained to Defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this Agreement with Defendant. To my knowledge, Defendant's decision to waive indictment and enter into this Agreement is an informed and voluntary one.

  
William Dolan, Esq.  
Attorney for Defendant Rice

7-30-04  
Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH RICE,

Defendant.

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)  
)  
) No. CR-H-03-0093-04  
) (Gilmore, J)  
)  
)  
)

Exhibit A to Plea Agreement

This statement by defendant Kenneth Rice is submitted to provide a factual basis for my plea of guilty to Count 31 of the above-captioned Fourth Superseding Indictment.

1. Enron Corporation ("Enron") was an Oregon corporation with its headquarters in Houston, Texas. Among other businesses, Enron was engaged in the purchase and sale of natural gas, construction and ownership of pipelines and power facilities, telecommunications services, and trading in contracts to buy and sell various commodities. Enron stock was publicly traded on the New York Stock Exchange ("NYSE").
2. I was employed at Enron from 1980 to July 2001. From July 1999 to February 2000, I was Co-Chief Executive Officer ("CEO") of Enron Broadband Services ("EBS"). From February 2000 until July 2000, I was Chief Commercial Officer ("CCO") of EBS. From August 2000 to July 2001, I was CEO of EBS. EBS was Enron's telecommunications subsidiary. While CEO, Co-CEO and CCO, I and other officers and employees of Enron Corp. and EBS made false statements about the products, services and business performance of EBS. Our purpose was to mislead investors and others about the success of EBS, including the extent to which the company had developed various products and services and the company's financial performance, in order to artificially inflate the price of Enron stock.
3. I also engaged in schemes to enrich myself and others at the expense of Enron shareholders and in violation of my duty of honest services to those shareholders.
4. Certain of those fraudulent statements, for which I accept responsibility, are detailed below.

5. I conspired with others to falsely portray the commercial and developmental success of ~~EBS to the investing public by, among other things, making false statements about the~~ company's development of certain software capabilities and its fiber-optic network. In particular, in late 1999 and early 2000, I, together with others, conspired to falsely claim to investment analysts at Enron's January 20, 2000 analyst conference that EBS had developed revolutionary network control software that, among other things, allowed the company to provide differentiated quality of service, dynamic provisioning of bandwidth and usage-based metering and billing, features that, if they had existed, would have been unique in the industry and given EBS a significant competitive advantage. We also falsely represented that EBS' fiber-optic network was superior and essentially complete. In reality, substantial portions of EBS' network were not operational and the network was not superior to those of our competitors. In addition, EBS' network did not operate as we publicly portrayed. For example, at no point in my tenure with the company was EBS able to develop commercially viable network control software, also known as the "Broadband Operating System," or "BOS," that could provide these revolutionary features. Moreover, it was known throughout the company as of January 2000 that the BOS had not progressed beyond the internal development stage and was not deployed on EBS' fiber optic network. The purpose in making these misrepresentations was to falsely portray to the investing public that EBS had a thriving telecommunications business that had successfully developed revolutionary software which would, in turn, cause Enron's stock price to increase significantly.
6. In addition to making false statements at the January 20, 2000 analyst conference, I and others permitted press releases to be issued making false claims about EBS' commercial performance and network services features. In my role as Co-CEO and CCO, I reviewed press releases and was aware that false statements were being made about a variety of matters. Among those false claims were assertions made in 1999-2001 that EBS had successfully developed and deployed the BOS and that the BOS was controlling our network. In reality, the BOS did not progress beyond the internal development stage, was never deployed and was not controlling EBS' network. I was aware that the status of the BOS was being misrepresented in press releases but did nothing to correct them.
7. EBS struggled commercially throughout 2000. The company had an inflated cost structure and very limited revenues. EBS was able to meet its targets, but only by engaging in transactions some of which involved the sale of assets to parties such as the LJM2 partnership. Internal projections indicated that the company stood to take substantial losses in 2001, well beyond publicly announced targets.
8. In December 2000 and January 2001, I and others began to prepare for Enron's January 25, 2001 analyst conference. At the January 25, 2001 analyst conference, I and others falsely portrayed EBS as a commercial and business success. I also claimed that the BOS network control software was "up and running" on our network and allowed the company to deliver the unique features outlined in paragraph 5 above. In reality, as in January

2000, the BOS software had not progressed beyond the internal development stage and was not controlling our network. Moreover, EBS did not have any software that delivered the quality of service, usage-based metering and billing and dynamic bandwidth provisioning features across all layers of the network. In addition, I knew that the company stood to sustain operating losses in 2001 greater than our publicly announced targets and that it lacked a sustainable customer and commercial base. I failed to disclose these facts to the investing public, which created a misleading impression of the vitality of the company. The purpose in making these omissions and misrepresentations was to falsely portray EBS as a successful venture and, in turn, to positively influence Enron's stock price.

9. I understood at the time that I made these statements that they were false and that there was a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest. I also understood that Enron stock was publicly traded on the NYSE. I also understood that interstate wire transmissions, including fax transmissions, email and telephone calls, would be used and were used in furtherance of the scheme. Specifically, among other things I knew that press releases would be released through the use of interstate wire communications. From January 20, 2000 through at least March 31, 2001, EBS accounted for a minimum of \$10 of the total value of Enron's stock price. Throughout this same period, Enron had in excess of 500,000,000 outstanding shares.
10. The preceding is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to Count 31 of the Fourth Superseding Indictment. It does not include all of the facts known to me concerning criminal activity in which I and other members of Enron and EBS' senior management engaged. I make this statement knowingly and voluntarily because I am in fact guilty of the crimes charged.



Kenneth Rice  
Defendant



Date

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH RICE  
JOSEPH HIRKO  
KEVIN HANNON  
KEVIN HOWARD  
SCOTT YEAGER  
REX SHELBY, and  
MICHAEL KRAUTZ,

Defendants.

Crim. No. H-03-93-04

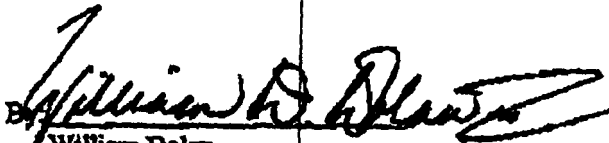
**STIPULATION AND WAIVER**

I, Teresa K. Rice, hereby agree to waive all right, title, and interest I have in the following property in connection with the forfeiture proceedings in this criminal case:

- (a) real property known as 7207 Last Dollar Canyon, located in Telluride, Colorado, including lot 15A titled in the name of Summit Canyon Qualified Personal Residence Trust I and Summit Canyon Qualified Personal Residence Trust II, and lot 11A titled in the name of Summit Canyon, LLC;
- (b) a platinum, sapphire and diamond necklace, with 16 diamonds (total weight approximately 3.38 carats) and 226 sapphires (total weight approximately 15.05 carats) and a platinum, sapphire and diamond bracelet with approximately 6.65 carats of sapphires and approximately 1.68 carats of diamonds, purchased from Borsheim's Jewelry on June 15, 2000;
- (c) One 1995 Ferrari F355 Challenge, VIN no. ZFFPR41A2S0104478, registered to Ken Rice;

- (d) One 1999 Shelby, VIN no. 5CXSA1810XL000027, registered to Kenneth Rice;
- (e) \$219,112.03 in Ameritrade account no. E240-052859, in the name of Kenneth D. Rice and Teresa K. Rice;
- (f) Contents of Bank of America account no. TX4-052400/06058489373, in the name of Kenneth D. Rice and Teresa K. Rice;
- (g) \$8,265.06 in cash and/or money market funds held in Goldman Sachs account no. 012-10733-0, in the name of Kenneth Rice;
- (h) The contents of Sentinel Trust account number 21-25018, in the name of Ken Rice Restricted Agency Account, including cash and/or money market funds, all securities, a partnership interest based on a \$750,000 capital contribution in BBT Partners, L.P., and all interest in Sternhill Partners I, L.P., a limited partnership.
- (i) The contents of the Sentinel Trust account no. 08-25000, including all cash and/or money market funds and securities, in the name of the Ken and Teresa Rice Foundation;
- (j) The contents of Sentinel Trust, Account No. 11-25017, constituting the proceeds of the sale of the property located at 400 Elk Creek Road;
- (k) The contents of Sentinel Trust Account 11-25016, constituting the proceeds of the sale of a 2001 Ferrari 360 Challenge, VIN no. ZFFYS1800123311;
- (l) \$300,000 of Highland County FL Health Facilities Revenue Bond held in Goldman Sachs account no. 012-10733-0, in the name of Kenneth Rice;

I further agree that all right, title and interest I have in these properties can be forfeited to the United States without further notice to me. I also agree to execute and record any and all documents necessary to transfer the funds to the United States as part of a forfeiture judgment.

  
William Dolan

<sup>1</sup> The contents of this account do not include Manulife Financial Venture Annuity #2101902, which is reflected on the account statement but not actually held in the account.

07/29/2004 21:34 838-896-8189

YO HOTEL

PAGE 04/04

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Cogdell & Lewis

#7579 P.004/004

W. Warren Hamel  
Jennifer Blackwell  
Attorneys for Kenneth Rice

AGREED AND CONSENTED TO:

Teresa K Rice  
Teresa K. Rice

Dated: July 29, 2004

## **EXHIBIT 2**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Court  
Southern District of Texas  
FILED

U  
2 JUL 22 2004

Michael H. Miller, Clerk

UNITED STATES OF AMERICA

v.

KENNETH RICE,  
JOSEPH HIRKO,  
KEVIN HANNON,  
KEVIN HOWARD,  
SCOTT YEAGER,  
REX SHELBY, and  
MICHAEL KRAUTZ

§  
§  
§ Cr. No. H-03-93-04  
§

§ Violations: 15 U.S.C. §§ 78j(b) and 78ff;  
§ 17 C.F.R. § 240.10b-5 (Securities Fraud);  
§ 18 U.S.C. §§ 1343 (Wire Fraud);  
§ 371 (Conspiracy); 2 (Aiding and Abetting);  
§ 1957 (Money Laundering); 981 and 982  
§ (Asset Forfeiture); 28 U.S.C. § 2461  
§ (Asset Forfeiture).

FOURTH SUPERSEDING INDICTMENT

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this Fourth Superseding Indictment, Enron Corp.

("Enron") was a publicly-traded Oregon corporation with its headquarters in Houston, Texas.

Among other businesses, Enron was engaged in the purchase and sale of natural gas, construction and ownership of pipelines and power facilities, provision of telecommunication services, and trading in contracts to buy and sell various commodities. Before it filed for bankruptcy on December 2, 2001, Enron was the seventh largest corporation in the United States.

2. Enron was a publicly traded company whose shares were listed on the New York Stock Exchange. As a public company, Enron was required to comply with regulations of the United States Securities and Exchange Commission ("SEC"). Those regulations protect members of the investing public by, among other things, ensuring that a company's financial information is accurately recorded and disclosed to the public.

3. Prior to 1997, Enron was not involved in the telecommunications business. On July 1, 1997, Enron acquired a public utility, Portland General Corporation, based in Portland, Oregon. As part of that acquisition, Enron acquired Portland General's telecommunications division, FirstPoint Communications, Inc. ("FirstPoint"). In 1998, Enron changed the name of FirstPoint to Enron Communications, Inc. ("ECI") and expanded the business. In approximately January 2000, ECI was renamed Enron Broadband Services (BCI and EBS will collectively be referred to herein as "EBS"). At all times relevant to this Fourth Superseding Indictment, EBS was a wholly-owned subsidiary of Enron engaged in the telecommunications business.

The Defendants

4. Defendant KENNETH RICE is a resident of Houston, Texas. RICE was Chairman and Chief Executive Officer ("CEO") of EBS from approximately July 16, 1999 to approximately July 13, 2001. RICE shared CEO responsibilities with JOSEPH HIRKO from approximately July 16, 1999 to July 28, 2000.

5. Defendant JOSEPH HIRKO is a resident of Portland, Oregon. HIRKO was President and CEO of EBS from approximately July 1, 1998 to July 28, 2000. HIRKO shared CEO responsibilities with KENNETH RICE from approximately July 16, 1999 to July 28, 2000.

6. Defendant KEVIN HANNON is a resident of Houston, Texas. HANNON was Chief Operating Officer ("COO") of EBS from approximately January 27, 2000 to June 2001.

7. Defendant KEVIN HOWARD is a resident of Houston, Texas. HOWARD was Vice President of Finance at EBS from approximately August 1, 1999 to September 2001.

8. Defendant SCOTT YEAGER is a resident of Sugarland, Texas. YEAGER became Senior Vice President of Strategic Development at EBS on approximately October 1,

1998. His employment at EBS was terminated on approximately August 1, 2001.

9. Defendant REX SHELBY is a resident of Houston, Texas. SHELBY became Senior Vice President of Engineering Operations at EBS on approximately December 9, 1998. His employment at EBS was terminated on approximately November 15, 2001.

10. Defendant MICHAEL KRAUTZ is a resident of Houston, Texas. KRAUTZ was Senior Director of Transactional Accounting at EC/EBS from approximately August 16, 1999 to October 3, 2001.

### THE SCHEMES TO DEFRAUD

#### Summary of the Schemes

11. From at least April 1999 until May 14, 2001, defendants KENNETH RICE, JOSEPH HIRKO, KEVIN HANNON, KEVIN HOWARD, SCOTT YEAGER, REX SHELBY, and MICHAEL KRAUTZ, together with others, engaged in conduct and made false and misleading statements and omitted material information from statements made, all of which were designed to and did deceive the investing public and others about the technological capabilities, value, revenue and business performance of EBS. The defendants executed this scheme by, among other means: (i) causing Enron to issue materially false and misleading press releases; (ii) making and causing others to make materially false and misleading statements to equity analysts and others; (iii) using fraudulent means to generate revenue so that EBS and Enron could appear to reach publicly declared financial targets; and (iv) failing to disclose material adverse information about EBS's poor business performance. During this same time period, defendants RICE, HIRKO, HANNON, YEAGER, and SHELBY sold large quantities of Enron stock, generating millions of dollars for themselves.

Proposal to Build the Enron Intelligent Network

12. In late 1998, defendant SCOTT YEAGER proposed that Enron build an advanced, software-driven, "intelligent" telecommunications network. Defendant JOSEPH HIRKO backed this proposal. To implement this plan, EBS acquired Modulus, a small software company run by, among others, defendant REX SHELBY. SHELBY was tasked with turning Modulus' messaging software, called InterAgent, into complex "intelligent" network control software capable of running a nationwide telecommunications network with advanced features, such as automated billing and user-defined and controlled quality of service.

False Statements: Press Releases

13. On April 19, 1999, defendants HIRKO, YEAGER and SHELBY issued and caused to be issued the first of many materially false and misleading press releases. The press release announced that the Enron Intelligent Network was tested, "lit," or operational, and ready to deliver two products, a media streaming product and a media transport product. The press release stated that a software control layer powered by InterAgent was embedded on Enron's network and the networks of Enron's distribution partners. The press release stated that the InterAgent software provided built-in "intelligence" that allowed Enron to route data efficiently and reliably and provide usage-based metering and billing, bandwidth scheduling, and user-defined quality of service, or "QOS," to the desktop. All of these claims were false and misleading. Among other false claims, only a small part of the network was lit, the two media products were not functional, and the claimed network control software did not exist.

14. During the remainder of 1999, defendants RICE, HIRKO, YEAGER and SHELBY issued and caused to be issued numerous additional press releases containing false claims about

the Enron network similar to those set forth in paragraph 13 above. At various times during 1999 and early 2000, numerous EBS executives and employees told RICE, HIRKO, YEAGER and SHELBY that, among other things, the Enron network was not intelligent and Enron's press releases and marketing materials were false and misleading. Despite these warnings, and other negative information about EBS, RICE, HIRKO, YEAGER and SHELBY failed to correct past false statements and continued to issue new false statements.

15. In the summer of 1999, Enron announced that EBS would become a "core" Enron business and a major part of Enron's overall business strategy. In early November 1999, Enron senior management, HIRKO and RICE decided to make EBS the centerpiece of Enron's annual presentation to equity analysts, scheduled for January 20, 2000.

The January 20, 2000 Analyst Conference

16. Between late October 1999 and January 2000, defendants RICE, HIRKO, YEAGER, SHELBY, HOWARD and others attended meetings and participated in conference calls to prepare a PowerPoint and video presentation about EBS for Enron's upcoming analyst conference. In these meetings, RICE, YEAGER, HIRKO, SHELBY and others decided to rename Enron's network software, which was still in very early planning stages, the "Broadband Operating System," or "BOS." Early drafts of the PowerPoint presentation clearly stated that the BOS and related network control software was under development and would not be deployed and operational until a future date. During December 1999 and January 2000, these "forward-looking" statements were progressively deleted from the PowerPoint presentation.

17. On January 20, 2000, Enron made EBS the major focus of its annual equity analyst conference in Houston, Texas. During the presentation, which defendant YEAGER also attended,

defendants RICE, HIRKO, SHELBY and others made numerous false and misleading statements about EBS's fiber network, proprietary software and technical capabilities. Among other things, HIRKO, SHELBY and others claimed that EBS possessed advanced network control software that made Enron superior to its competitors by allowing Enron to control quality of service all the way to the customer's desktop and to bill customers only for the amount of bandwidth capacity they actually used rather than at a flat billing rate. As part of this effort, SHELBY made a video presentation about the BOS in which he claimed that the BOS software was built and controlling the network, providing quality of service control and other features. These claims, along with other statements made by RICE, HIRKO, SHELBY and others during the presentation, were false and misleading. As RICE, HIRKO, SHELBY and YEAGER knew, Enron did not have any proprietary network control or BOS software on its commercial network; Enron's network did not possess most of the advanced capabilities claimed during the presentation; the only portion of the BOS project actually in existence was in development in a software lab; and most of the software specifications that would be required before the BOS software could be written and deployed had not yet even been defined.

18. The Enron presentation was received favorably by analysts and investors. On January 20, 2000, the day of the presentation, the share price of Enron stock increased from approximately \$54 to \$67. The following day, the stock rose above \$72.

Continued False Statements

19. Following the analyst conference, between approximately January 31, 2000 and July 19, 2000, defendants RICE, HANNON, HIRKO, YEAGER, SHELBY and others continued to cause the issuance of materially false and misleading press releases. These press releases

falsely stated that intelligent software or an intelligent operating system, typically referred to by name as the BOS, was embedded on the Enron network and provided quality of service control and other features. In fact, the BOS remained in the specification drafting phase, Enron had no proprietary control software deployed on its network, and Enron had no software that could control quality of service.

#### The Blockbuster Agreement

20. On April 5, 2000, EBS signed a 20-year exclusive agreement with Blockbuster Inc. ("Blockbuster"), the nation's largest video rental company, to stream movies to customers' homes. Under the agreement, Blockbuster was responsible for obtaining digital rights to film content from studios and other sources. EBS was responsible for encoding the movies and streaming them over its telecommunications network to customers' homes. This business was known as "video on demand," or "VOD," because the customers were supposed to be able to access and watch movies in their homes whenever they wanted. To obtain this contract, EBS employees misled Blockbuster employees about the capabilities of the Enron network. Enron announced the deal on July 19, 2000, issuing a press release that was false and misleading in numerous respects.

21. The VOD service never got beyond the testing stage, as EBS never developed a cost-effective way to stream movies to customers' homes, and Blockbuster and EBS never obtained sufficient quantities of premium content to distribute over the system. As a result, the EBS/Blockbuster relationship never generated any recurring revenue for EBS.

#### Origins of Project Braveheart

22. Enron's Chief Operating Officer projected at the January 2000 analyst conference

that EBS would lose approximately \$60 million during 2000. On October 9, 2000, defendants RICE, HANNON, HOWARD, and others were informed that EBS – which had failed to generate any significant recurring revenues during 2000 – would lose approximately \$118 million in the fourth quarter of 2000 alone. As a result, RICE, HANNON, and HOWARD knew that absent a large infusion of revenue before year end, EBS would miss its previously announced target by a wide margin.

23. In approximately fall of 2000, defendant HOWARD ordered Enron employees who reported to him to examine the Blockbuster agreement to see if there was any way Enron could derive accelerated earnings for the fourth quarter of 2000. The structured finance transaction that resulted was known at EBS by the code name "Project Braveheart" and was designed to allow EBS to "monetize" the Blockbuster agreement. The monetization first involved calculating the net present value of the VOD business, based upon its estimated future earnings, and then creating a joint venture that would allow EBS to sell those future earnings to a third party as a financial asset. EBS would then recognize the gain from this sale as revenue immediately at the time of the monetization, rather than gradually over the life of the agreement. Though EBS initially planned to recognize a small amount of the proceeds as revenue in 2000, HANNON ordered that the size of the transaction be increased over the course of the fourth quarter of 2000, as defendants HANNON, HOWARD and others learned that EBS would potentially miss its earnings target by an increasing amount.

#### Structure of the Braveheart Transaction

24. In order to complete the Braveheart transaction, EBS created a joint venture with two investors: nCube, a small VOD technology company based in Beaverton, Oregon, and



"Thunderbird," an investment vehicle owned by an Enron-controlled investment fund called "Whitewing." nCube and Thunderbird purportedly combined to contribute 3% of the equity of the joint venture, which was called EBS Content Systems LLC. The joint venture was purposely "deconsolidated" from Enron's books so that the results of its operations would not be reflected on Enron's financial statements. EBS subsequently assigned the Blockbuster contract to the joint venture. EBS then sold a portion of its interest in the joint venture for approximately \$115 million to an investment structure called "Hawaii 125-0," which previously had been created and funded by the Canadian Imperial Bank of Commerce ("CIBC"). Enron recognized approximately \$111 million of the \$115 million it received from CIBC as revenue in the fourth quarter of 2000 and the first quarter of 2001.

#### Accounting Requirements for the Braveheart Transaction

25. Under relevant accounting rules, Enron could recognize earnings from the Braveheart transaction only if, among other things, three basic accounting requirements were met: (i) EBS did not control the joint venture; (ii) nCube and Thunderbird made at-risk equity investments in the joint venture, and these investments remained at risk for the duration of the joint venture; and (iii) the Hawaii 125-0 trust's capital structure included at least a 3% at-risk equity investment. Defendants HOWARD and KRAUTZ were aware of and understood these requirements. If these requirements were not met, the proceeds Enron received from CIBC should have been reported as debt, not revenue.

#### Violation of Accounting Requirements

26. Defendants HOWARD, KRAUTZ and others intentionally violated these accounting requirements in order to complete the transaction and record \$111 million in revenue

for Enron. Among other things, HOWARD, KRAUTZ, and others (i) selected nCube as a joint venture partner because they knew that nCube would and did allow EBS to control the joint venture; (ii) promised nCube that it could sell its interest in the joint venture to EBS or an EBS designee in early 2001 and would receive, at that time, its investment plus a fixed return; and (iii) "sold" an interest in the joint venture to CIBC even though HOWARD and others knew that Enron had promised CIBC that it would not lose money on its Hawali 125-0 transactions.

27. Defendants HOWARD, KRAUTZ and others also intentionally deceived Arthur Andersen accountants working on the transaction by failing to disclose, among other things, that the Braveheart transaction deliberately had been structured in a way that violated applicable accounting requirements. As HOWARD and KRAUTZ knew, had all of the facts about the transaction been disclosed, Enron would not have been able to report any of the \$111 million as revenue.

#### Impact of the Braveheart Transaction

28. In the fourth quarter of 2000, \$53 million of EBS's reported \$63 million in revenue came from Braveheart, while in the first quarter of 2001, \$58 million of EBS's \$85 million in reported revenue was from the transaction. On January 22, 2001, Enron's Chief Operating Officer announced to equity analysts on a conference call that EBS had met its \$60 million loss target. Absent the fraudulent Braveheart revenues, EBS would have missed its publicly stated target for the year 2000 by more than \$50 million. Similarly, in the first quarter of 2001, EBS would have missed its quarterly target but for the revenues from the fraudulent Braveheart transaction. Enron reported the revenues from the Braveheart transaction on its publicly filed SEC form 10-K for 2000 and SEC form 10-Q for the first quarter of 2001.

The January 25, 2001 Analyst Conference

29. Between approximately October 2000 and January 22, 2001, defendants RICE and HANNON were repeatedly informed that: EBS was performing very poorly; EBS had made little commercial progress during 2000; EBS's network operations should be shut down or sold; and EBS had an unsupportable cost structure. This information was provided by senior executives, independent business consultants, and in weekly management summaries setting forth EBS's projected losses. On January 22, 2001, RICE and HANNON were informed that every business unit at EBS was losing money and that EBS currently estimated that it would lose more than \$149 million in the first quarter of 2001.

30. In December 2000, defendants RICE and HANNON also became aware that Blockbuster was threatening to terminate the EBS-Blockbuster VOD agreement because, among other things, EBS had failed to meet its contractual commitment to sign distribution agreements with each regional Bell operating company by December 2000. In order to prevent termination, which would threaten the Braveheart transaction, EBS negotiated an extension with Blockbuster in which both parties agreed not to terminate the agreement before March 2001. The agreement was subsequently terminated in March 2001.

31. In January 2001, defendants RICE and HANNON held a series of meetings to plan the EBS presentation for Enron's upcoming annual equity analyst conference, scheduled for January 25, 2001. During these meetings, RICE and HANNON, among other things, reviewed estimates of EBS's value. During one meeting, RICE and HANNON reviewed a model showing the value of EBS's content distribution business as \$8 billion, a sharp decline from the \$18 billion

estimate presented at the 2000 analyst conference. After RICE stated that he would not allow EBS to present a number lower than the prior year, the number was inflated to \$21 billion.

32. On January 25, 2001, defendants RICE and HANNON made a presentation about EBS at Enron's annual equity analyst conference. In the EBS presentation, RICE stated, among other things, that EBS's strategy was right on target; EBS's content delivery business had an outstanding year; Blockbuster was EBS's "anchor tenant" with a 20-year deal; EBS had a commercially viable and scalable broadband delivery platform; the BOS network control software was up and running and controlling Enron's network; EBS was ahead of where it expected to be in January 2000; and EBS, which Enron claimed was worth an estimated \$30 billion in January 2000, was now, after deducting costs, worth \$36 billion, with \$21 billion of that figure derived from content services. These statements and others were false and misleading. RICE and HANNON did not disclose that EBS was performing worse than expected, that every business unit at EBS but one was losing more money than expected, that EBS did not have a cost effective or scalable broadband delivery platform, that the BOS network control software was still under development, that the Blockbuster deal was in danger of cancellation and had been extended only through March 2001, or that, even though EBS had yet to receive any recurring revenue from the Blockbuster deal, it already had sold the majority of the future revenue from the Blockbuster contract through the Braveheart transaction. RICE also stated that EBS would lose \$65 million in 2001, even though he had been provided three days earlier with EBS's own internal estimate of far greater losses.

#### The Defendants' Stock Trading

33. Defendants RICE, HIRKO, HANNON, YEAGER and SHELBY received shares

and options relating to Enron stock as part of their compensation. At a time when they and others at Enron were making materially false and misleading public statements about EBS, the defendants sold large quantities of Enron stock, generating huge profits. Specifically, between January 20, 2000 and July 12, 2001, RICE sold \$53,087,529.44 worth of Enron stock. Between January 20, 2000 and July 28, 2000, HIRKO sold \$35,167,761.41 worth of Enron stock. Between January 23, 2001 and January 26, 2001, HIRKO sold an additional \$35,212,724.00 in Enron stock. On December 26, 2000, HANNON sold \$7,852,750.60 in Enron stock. Between January 20, 2000 and August 23, 2000, YEAGER sold \$54,660,686.46 in Enron stock. Between January 20, 2000 and July 19, 2000, SHELBY sold \$35,230,923.89 worth of Enron stock.

COUNT ONE

(Conspiracy to Commit Wire and Securities Fraud)

34. The allegations of paragraphs 1 through 33 are realleged as if fully set forth here.

35. In or about and between at least April 19, 1999 and May 14, 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, the defendants KENNETH RICE, JOSEPH HIRKO, KEVIN HANNON, KEVIN HOWARD, SCOTT YEAGER, REX SHELBY and MICHAEL KRAUTZ, together with others, did knowingly and intentionally conspire (1) willfully and unlawfully to use and employ manipulative and deceptive devices and contrivances and directly and indirectly (i) to employ devices, schemes and artifices to defraud; (ii) to make untrue statements of material fact and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) to engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with the

purchase and sale of Enron stock and by the use of the instruments of communication in interstate commerce and the mails, in violation of Title 15, United States Code, Section 78j(b), 78ff and Rule 10b-5 of the SEC, Title 17, Code of Federal Regulations, Section 240.10b-5, and (2) to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and, for the purpose of executing such scheme and artifice, to cause interstate wire communications in violation of Title 18, United States Code, Section 1343.

#### OVERT ACTS

36. In furtherance of the conspiracy and to effect the objects thereof, within the Southern District of Texas and elsewhere, the defendants KENNETH RICE, JOSEPH HIRKO, KEVIN HANNON, KEVIN HOWARD, SCOTT YEAGER, REX SHELBY, MICHAEL KRAUTZ, and others, did commit and cause to be committed the following overt acts, among others:

##### False Press Releases - 1999

- a. On or about April 19, 1999, HIRKO, YEAGER, SHELBY and others issued and caused to be issued a press release regarding the Enron Intelligent Network.
- b. On or about April 19, 1999, HIRKO, YEAGER, SHELBY and others issued and caused to be issued a press release regarding Media Cast.
- c. On or about May 11, 1999, HIRKO, YEAGER, SHELBY and others issued and caused to be issued a press release regarding a fiber lease agreement.
- d. On or about May 20, 1999, HIRKO, YEAGER, SHELBY and others issued and caused to be issued a press release regarding a global bandwidth commodity market.
- e. On or about September 23, 1999, RICE, HIRKO, YEAGER, SHELBY and others

issued and caused to be issued a press release regarding the Country Music Awards webcast.

f. On or about October 26, 1999, RICE, HIRKO, YEAGER, SHELBY and others issued and caused to be issued a press release regarding new ISP partners.

The 2000 Analyst Conference

g. In or about and between November 1999 and January 2000, both dates being approximate and inclusive, RICE, HIRKO, HOWARD, YEAGER, SHELBY and others attended meetings and participated in conference calls to plan the scheduled January 20, 2000 analyst conference.

h. On or about November 9, 1999, RICE instructed business consultants that RICE, HIRKO and SHELBY would be responsible for planning the upcoming January 2000 equity analyst conference.

i. On or about January 20, 2000, RICE, HIRKO, SHELBY and others made false statements about EBS at Enron's equity analyst conference.

False Press Releases - 2000

j. On or about January 31, 2000, RICE, HIRKO, HANNON, YEAGER, SHELBY and others issued and caused to be issued a press release regarding Sycamore Networks.

k. On or about March 8, 2000, RICE, HIRKO, HANNON, YEAGER, SHELBY and others issued and caused to be issued a press release regarding i2.

l. On or about March 30, 2000, RICE, HIRKO, HANNON, YEAGER, SHELBY and others issued and caused to be issued a press release regarding VOD Network Solutions.

m. On or about April 11, 2000, RICE, HIRKO, HANNON, YEAGER, SHELBY and others issued and caused to be issued a press release regarding AtomFilms.

n. On or about May 15, 2000, RICE, HIRKO, HANNON, YEAGER, SHELBY and others issued and caused to be issued a press release regarding Warpspeed.

o. On or about June 29, 2000, RICE, HIRKO, HANNON, YEAGER, SHELBY and others issued and caused to be issued a press release regarding Wimbledon.

p. On or about July 19, 2000, RICE, HIRKO, HANNON, YEAGER, SHELBY and others issued and caused to be issued a press release regarding Blockbuster.

The 2001 Analyst Conference

q. In or about January 2001, RICE, HANNON and others attended meetings to plan the scheduled January 25, 2001 analyst conference.

r. On or about January 25, 2001, RICE, HANNON and others made false statements about EBS to equity analysts at Enron's equity analyst conference in Houston, Texas.

Project Braveheart

s. In or about early fall 2000, HOWARD ordered EBS employees to examine the Blockbuster agreement to see if EBS could use it to generate revenue in the fourth quarter of 2000.

t. On or about September 19, 2000, KRAUTZ sent an e-mail message to EBS employees regarding the Blockbuster agreement and the proposed monetization.

u. On or about October 10, 2000, HOWARD sent an e-mail message to an EBS employee discussing formation of the joint venture and the relevant accounting requirements.

v. On or about November 7, 2000, HOWARD caused an EBS employee to send an e-mail message to a representative of nCube proposing formation of the joint venture.

w. On or about November 8, 2000, HOWARD met with an nCube executive to



propose formation of the joint venture.

x. On or about November 22, 2000, HOWARD and KRAUTZ participated in a telephone conversation with nCube executives to discuss the proposed joint venture.

y. On or about November 22, 2000, KRAUTZ caused an EBS employee to send to nCube a document that set forth proposed accounting journal entries.

z. On or about November 30, 2000, HOWARD and KRAUTZ participated in a telephone conversation with nCube executives to discuss the proposed joint venture.

aa. On or about December 13, 2000, KRAUTZ sent an e-mail message to Arthur Andersen and Enron employees describing the nature of nCube's investment in the joint venture.

bb. On or about February 7, 2001, KRAUTZ sent an e-mail message to an EBS employee regarding possible disclosure of information to Arthur Andersen.

cc. On or about February 16, 2001, HOWARD caused \$1.7 million to be wired from an Enron bank account in New York to an nCube account at the Bank of America in Beaverton, Oregon.

dd. On or about March 1, 2001, KRAUTZ sent an e-mail message to an EBS employee regarding EBS's performance of duties by the joint venture.

ee. On or about March 15, 2001, HOWARD sent an e-mail message to EBS employees congratulating them on the Braveheart transaction.

ff. In or about April 2001, HOWARD presented an executive summary of the Braveheart transaction to senior EBS executives.

( Title 18, United States Code, Sections 371 and 3551 et seq. )

**COUNT TWO**

(Securities Fraud: January 2000 Analyst Conference)

37. The allegations of paragraphs 1 through 33 and 36(g - i) are realleged as if fully set forth here.

38. On or about January 20, 2000, within the Southern District of Texas and elsewhere, the defendants KENNETH RICE, JOSEPH HIRKO, SCOTT YEAGER and REX SHELBY, together with others, did willfully and unlawfully use and employ manipulative and deceptive devices and contrivances and directly and indirectly (i) employ devices, schemes and artifices to defraud; (ii) make untrue statements of material facts and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with purchases and sales of Enron stock and by the use of the instruments of communication in interstate commerce and the mails.

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

**COUNTS THREE THROUGH FOURTEEN**

(Wire Fraud: April 1999 to July 2000)

39. The allegations of paragraphs 1 through 33 and 36(a - f) and (j - p) are realleged as if fully set forth here.

40. On or about the dates specified below, within the Southern District of Texas and elsewhere, the defendants KENNETH RICE, JOSEPH HIRKO, SCOTT YEAGER and REX SHELBY, together with others, having devised a scheme and artifice to defraud and to obtain

money and property by means of materially false and fraudulent pretenses, representations and promises, did for the purpose of executing such scheme and artifice transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures and sounds, as follows:

Count	Date	From	To	Description
3	4/19/99	New York, NY	Nationwide <sup>1/</sup>	Press Release
4	5/11/99	New York, NY	Nationwide	Press Release
5	5/20/99	New York, NY	Nationwide	Press Release
6	9/23/99	New York, NY	Nationwide	Press Release
7	10/26/99	New York, NY	Nationwide	Press Release
8	1/31/00	New York, NY	Nationwide	Press Release
9	3/8/00	New York, NY	Nationwide	Press Release
10	3/30/00	New York, NY	Nationwide	Press Release
11	4/11/00	New York, NY	Nationwide	Press Release
12	5/15/00	New York, NY	Nationwide	Press Release
13	6/29/00	New York, NY	Nationwide	Press Release
14	7/19/00	New York, NY	Nationwide	Press Release

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

**COUNT FIFTEEN**  
(Securities Fraud: Project Bravheart)

41. The allegations of paragraphs 1 through 33 and 36(s - ff) are realleged as if fully set forth here.

42. In or about and between fall 2000 and May 14, 2001, both dates being approximate

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<sup>1/</sup> Among other places, these "nationwide" press releases were disseminated to Houston, Texas.

and inclusive, within the Southern District of Texas and elsewhere, the defendants KEVIN HOWARD and MICHAEL KRAUTZ, together with others, did willfully and unlawfully use and employ manipulative and deceptive devices and contrivances and directly and indirectly (i) employ devices, schemes and artifices to defraud; (ii) make untrue statements of material facts and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with purchases and sales of Enron stock and by the use of the instruments of communication in interstate commerce and the mails.

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

**COUNTS SIXTEEN THROUGH THIRTY**  
(Wire Fraud: Project Braveheart)

43. The allegations of paragraphs 1 through 33 and 36(s - ff) are realleged as if fully set forth here.

44. On or about the dates specified below, within the Southern District of Texas and elsewhere, the defendants KEVIN HOWARD and MICHAEL KRAUTZ, together with others, having devised a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did for the purpose of executing such scheme and artifice transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures and sounds, as follows:

Count	Date	From	To	Description
16	11/07/00	Houston, TX	California	e-mail
17	11/17/00	Houston, TX	Oregon	e-mail
18	11/22/00	Houston, TX	Oregon	e-mail
19	11/22/00	Houston, TX	Oregon	e-mail
20	11/22/00	Houston, TX	Oregon	telephone call
21	11/30/00	Houston, TX	Oregon	telephone call
22	12/06/00	Houston, TX	Oregon	e-mail
23	12/20/00	Houston, TX	Oregon	e-mail
24	1/24/01	Oregon	Houston, TX	e-mail
25	1/26/01	Houston, TX	Oregon	e-mail
26	1/26/01	Oregon	Houston, TX	e-mail
27	2/08/01	Houston, TX	Oregon	e-mail
28	2/14/01	Houston, TX	Oregon	e-mail
29	2/16/01	Houston, TX	Oregon	e-mail
30	2/16/01	Houston, TX	Oregon	e-mail

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

**COUNT THIRTY-ONE**

(Securities Fraud: 2001 Analyst Conference)

45. The allegations of paragraphs 1 through 33 and 36(q - r) are realleged as if fully set forth here.

46. On or about January 25, 2001, within the Southern District of Texas, the defendants KENNETH RICE and KEVIN HANNON, together with others, did willfully and unlawfully use and employ manipulative and deceptive devices and contrivances and directly and indirectly (i) employ devices, schemes and artifices to defraud; (ii) make untrue statements of

material facts and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engage in acts, practices, and courses of conduct which would and did operate as a fraud and deceit upon members of the investing public, in connection with purchases and sales of Enron stock and by the use of the instruments of communication in interstate commerce and the mails.

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

**COUNTS THIRTY-TWO THROUGH FORTY-EIGHT**  
**(Insider Trading: KENNETH RICE)**

47. The allegations in paragraphs 1 through 33 are realleged as if fully set forth here.

48. On or about the dates set forth below, within the Southern District of Texas and elsewhere, the defendant KENNETH RICE knowingly and willfully used and employed manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Section 78j(b) and 78ff. Specifically, while in possession of material non-public information regarding the technological capabilities, value, revenue and business performance of Enron Communications, Inc. and Enron Broadband Services, RICE sold shares of Enron stock and generated total proceeds of \$53,087,529.44 including but not limited to the following sales:

Count	Date	Shares	Sale Price	Gross Proceeds
32	2/17/00	42,400	\$ 70.3870	\$ 2,984,408.80
33	2/17/00	26,700	\$ 70.3870	\$ 1,879,332.90
34	2/17/00	49,382	\$ 70.3870	\$ 3,475,850.83
35	4/19/00	5,022	\$ 70.4940	\$ 354,020.87
36	4/19/00	9,980	\$ 70.4940	\$ 703,530.12
37	4/19/00	26,698	\$ 70.4940	\$ 1,882,048.81
38	4/19/00	58,300	\$ 70.4940	\$ 4,109,800.20
39	8/29/00	50,000	\$ 86.8473	\$ 4,342,365.00
40	8/29/00	13,920	\$ 86.8473	\$ 1,208,914.42
41	8/29/00	60,182	\$ 86.8473	\$ 5,226,644.21
42	12/13/00	100,000	\$ 76.6901	\$ 7,669,010.00
43	1/3/01	1,000	\$ 77.6250	\$ 77,625.00
44	1/3/01	1,000	\$ 77.00	\$ 77,000.00
45	1/3/01	1,500	\$ 76.00	\$ 114,000.00
46	2/14/01	136,300	\$ 80.0531	\$10,911,237.53
47	6/14/01	250	\$ 49.50	\$ 12,400.00
48	6/14/01	250	\$ 48.04	\$ 12,010.00

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

**COUNTS FORTY-NINE THROUGH FIFTY-SEVEN**  
**(2000 Insider Trading: JOSEPH HIRKO)**

49. The allegations in paragraphs 1 through 33 are realleged as if fully set forth here.

50. On or about the dates set forth below, within the Southern District of Texas and elsewhere, the defendant JOSEPH HIRKO knowingly and willfully used and employed

manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Section 78j(b) and 78ff. Specifically, while in possession of material non-public information regarding the technological capabilities, value, revenue and business performance of Enron Communications, Inc. and Enron Broadband Services, HIRKO sold shares of Enron stock as follows, generating total proceeds of \$35,167,761.41:

Count	Date	Shares	Sale Price	Gross Proceeds
49	2/18/00	761	\$ 69.3852	\$ 52,802.14
50	2/18/00	31,710	\$ 69.3852	\$ 2,200,204.69
51	2/18/00	2,741	\$ 69.3852	\$ 190,184.83
52	2/18/00	57,975	\$ 69.3852	\$ 4,022,606.97
53	4/20/00	35,212	\$ 70.6972	\$ 2,489,389.81
54	4/20/00	95,438	\$ 70.6972	\$ 6,747,199.37
55	5/11/00	35,212	\$ 78.0496	\$ 2,748,282.52
56	5/11/00	156,788	\$ 78.0496	\$12,237,240.68
57	5/12/00	58,000	\$ 77.2388	\$ 4,479,850.40

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)



**COUNT FIFTY-EIGHT**  
**(Insider Trading: KEVIN HANNON)**

51. The allegations in paragraphs 1 through 33 are realleged as if fully set forth here.

52. On or about the dates set forth below, within the Southern District of Texas and elsewhere, the defendant KEVIN HANNON knowingly and willfully used and employed manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission ("SEC") (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Section 78j(b) and 78ff. Specifically, while in possession of material non-public information regarding the technological capabilities, value, revenue and business performance of Enron Broadband Services, HANNON sold shares of Enron stock as follows:

Count	Date	Shares	Sale Price	Gross Proceeds
58	12/26/00	94,000	\$ 83.5399	\$ 7,852,750.60

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

**COUNTS FIFTY-NINE THROUGH EIGHTY**  
**(Insider Trading: SCOTT YEAGER)**

53. The allegations in paragraphs 1 through 33 are realleged as if fully set forth here.

54. On or about the dates set forth below, within the Southern District of Texas and elsewhere, the defendant SCOTT YEAGER knowingly and willfully used and employed

manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Section 78j(b) and 78ff. Specifically, while in possession of material non-public information regarding the technological capabilities, value, revenue and business performance of Enron Communications, Inc. and Enron Broadband Services, YEAGER sold shares of Enron stock as follows, generating total proceeds of \$54,660,686.46:

Count	Date	Shares	Sale Price	Gross Proceeds
59	1/21/00	100,000	\$ 72.0689	\$ 7,206,890.00
60	3/22/00	25,000	\$ 75.00	\$ 1,875,000.00
61	4/12/00	10,000	\$ 73.7563	\$ 737,563.00
62	5/10/00	10,000	\$ 75.00	\$ 750,000.00
63	5/11/00	10,000	\$ 77.2650	\$ 772,650.00
64	6/8/00	10,000	\$ 72.00	\$ 720,000.00
65	6/9/00	10,000	\$ 74.00	\$ 740,000.00
66	7/24/00	50,000	\$ 74.8750	\$ 3,743,750.00
67	7/27/00	25,000	\$ 74.00	\$ 1,850,000.00
68	7/27/00	25,000	\$ 74.95	\$ 1,873,750.00
69	7/27/00	25,000	\$ 74.5315	\$ 1,863,287.50
70	7/27/00	50,000	\$ 75.8215	\$ 3,791,075.00
71	7/27/00	50,000	\$ 76.9669	\$ 3,848,345.00

72	7/27/00	4,100	\$ 75.6870	\$ 310,316.70
73	7/27/00	900	\$ 75.75	\$ 68,175.00
74	8/2/00	50,000	\$ 77.8875	\$ 3,894,375.00
75	8/7/00	80,500	\$ 79.8633	\$ 6,428,995.65
76	8/8/00	69,500	\$ 81.0598	\$ 5,633,656.10
77	8/14/00	25,000	\$ 83.00	\$ 2,075,000.00
78	8/16/00	25,000	\$ 84.0018	\$ 2,100,045.00
79	8/17/00	25,000	\$ 85.35	\$ 2,133,750.00
80	8/23/00	25,000	\$ 89.7625	\$ 2,244,062.50

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

**COUNTS EIGHTY-ONE THROUGH EIGHTY-EIGHT**  
(Insider Trading: REX SHELBY)

55. The allegations in paragraphs 1 through 33 are realleged as if fully set forth here.

56. On or about the dates set forth below, within the Southern District of Texas and elsewhere, the defendant REX SHELBY knowingly and willfully used and employed manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Section 78j(b) and 78ff. Specifically, while in possession of material non-public information regarding the technological capabilities, value, revenue and business performance of Enron Communications, Inc. and Enron Broadband

Services, SHELBY sold shares of Enron stock and generated total proceeds of \$35,230,923.89

including but not limited to the following sales:

Count	Date	Shares	Sale Price	Gross Proceeds
81	1/21/00	75,000	\$ 72.00	\$ 5,400,000.00
82	1/21/00	75,000	\$ 70.25	\$ 5,268,750.00
83	2/1/00	50,000	\$ 66.5469	\$ 3,327,345.00
84	3/22/00	47,500	\$ 75.00	\$ 3,562,500.00
85	6/26/00	207,615	\$ 70.8199	\$14,703,273.54
86	6/27/00	1,450	\$ 70.00	\$ 101,500.00
87	6/28/00	39,665	\$ 70.00	\$ 2,776,550.00
88	7/19/00	1,230	\$ 73.2144	\$ 90,053.71

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

**COUNTS EIGHTY-NINE THROUGH NINETY-EIGHT**  
**(Money Laundering: KENNETH RICE)**

57. The allegations in paragraphs 1 through 33, 40 and 48 are realleged as if fully set forth here.

58. On or about the dates listed in the chart below, within the Southern District of Texas and elsewhere, the defendant KENNETH RICE did knowingly engage and attempt to engage, and did aid, abet, counsel, command, induce, procure and cause others to engage and attempt to engage in the following monetary transactions by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, to wit, the following transfers of funds generated through wire fraud and fraud in the sale of securities, which funds were derived from a specified unlawful activity, that is, wire fraud in

violation of Title 18, United States Code, Section 1343, and fraud in the sale of securities in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

Count	Date	Transaction
89	2/23/2000	Exchange of \$3,975,597.37 in proceeds from sale of Enron stock to offset margin debt in Paine Webber account no. HS E0255
90	4/25/2000	Exchange of \$6,236,021.67 in proceeds from sale of Enron stock to offset margin debt in Paine Webber account no. HS E0255
91	9/1/2000	Exchange of \$7,210,463.09 in proceeds from sale of Enron stock to offset margin debt in Paine Webber account no. HS E0255
92	9/6/2000	Transfer of \$1,050,500 by federal fund wire from Paine Webber account no. HS E0255 to United Title Companies
93	9/7/2000	Transfer of \$43,457.60 by check number 2223, payable to Charles Cunniffe Architects, from Paine Webber account no. HS E 0255
94	9/18/2000	Transfer of \$2,421,958.27 from Paine Webber account no. HS E0255 to Paine Webber account no. HM E 0007
95	1/3/2001	Transfer of \$3,882,947.95 from Paine Webber account no. HM E0281 to Paine Webber account no. HM E0007
96	3/9/2001	Transfer of \$1,500,000 from Paine Webber account no. HM E0281 to Paine Webber account no. HM E0007
97	5/22/2001	Transfer of \$1,419,911.43 from Paine Webber account no. HM E0281 to Paine Webber account no. HM E0007
98	7/12/2001	Transfer of \$508,806.75 from Paine Webber account no. HS G3848 to Paine Webber account no. HM E0007

(Title 18, United States Code, Sections 1957, 2 and 3551 et seq.)

COUNTS NINETY-NINE THROUGH ONE HUNDRED TEN  
(2000 Money Laundering: JOSEPH HIRKO)

59. The allegations in paragraphs 1 through 33, 40 and 50 are realleged as if fully set forth here.

60. On or about the dates listed in the chart below, within the Southern District of Texas and elsewhere, the defendant JOSEPH HIRKO did knowingly engage and attempt to engage, and did aid, abet, counsel, command, induce, procure and cause others to engage and attempt to engage in the following monetary transactions by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, to wit, the following transfers of funds generated through wire fraud and fraud in the sale of securities, which funds were derived from a specified unlawful activity, that is, wire fraud in violation of Title 18, United State Code, Section 1343, and fraud in the sale of securities in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

Count	Date	Transaction
99	3/31/2000	Transfer of \$224,500 from Paine Webber account no. HS 72449 to purchase 8,087.176 units of Pilgrim International Core Growth Fund Class A
100	3/31/2000	Transfer of \$224,500 from Paine Webber account no. HS 72449 to purchase 13,944.099 units of Pilgrim International Value Class A
101	3/31/2000	Transfer of \$224,500 from Paine Webber account no. HS 72449 to purchase 7,389.73 units of Pilgrim Growth & Value Class A
102	3/31/2000	Transfer of \$224,500 from Paine Webber account no. HS 72449 to purchase 5,182.36 units of Federated Intl Small Company Fd A
103	4/4/2000	Transfer of \$336,794 from Paine Webber account no. HS 72449 to Paine Webber account no. HS E5704
104	4/4/2000	Transfer of \$336,794 from Paine Webber account no. HS 72449 to Paine Webber account no. HS E5705
105	4/4/2000	Transfer of \$336,794 from Paine Webber account no. HS 72449 to Paine Webber account no. HS E5697

106	4/7/2000	Transfer of \$96,500 from Paine Webber account no. HS 72449 to Paine Webber account no. HS E5697
107	4/26/2000	Transfer of \$2,860,716.53 from Paine Webber account no. HS 72449, by check no. HS76782 to Bank of America account no. 28041-15626
108	5/17/2000	Transfer of \$3,674,635.99 from Paine Webber account no. HS 72449, by check no. HS78811 to Bank of America account no. 28041-15626
109	5/18/2000	Transfer of \$1,087,216.54 from Paine Webber account no. HS 72449, by check no. HS78858 to Bank of America account no. 28041-15626
110	9/21/2000	Transfer of \$234,068.43, as part of a larger transfer of \$301,113.30 from Paine Webber account no. HM 01298 to Paine Webber account no. HM 0292

(Title 18, United States Code, Sections 1957, 2 and 3551 et seq.)

**COUNTS ONE HUNDRED ELEVEN THROUGH TWO HUNDRED NINE**  
**(Money Laundering: SCOTT YEAGER)**

61. The allegations in paragraphs 1 through 33, 40 and 54 are realleged as if fully set forth here.

62. On or about the dates listed in the chart below, within the Southern District of Texas and elsewhere, the defendant SCOTT YEAGER did knowingly engage and attempt to engage, and did aid, abet, counsel, command, induce, procure and cause others to engage and attempt to engage in the following monetary transactions by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, to wit, the following transfers of funds generated through wire fraud and fraud in the sale of securities, which funds were derived from a specified unlawful activity, that is, wire fraud in violation of Title 18, United State Code, Section 1343, and fraud in the sale of securities in

violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

Count	Date	Transaction
111	2/7/2000	Transfer of \$250,000 by federal funds wire from Paine Webber Account no. HS E2608 to Salomon Smith Barney Account no. 414-4317510106
112	3/15/2000	Transfer of \$999,892.31 by federal funds wire, as part of a larger transfer of \$1,000,000, from Paine Webber Account no. HS E2608 to BOL Partnership
113	4/5/2000	Transfer of \$100,000 by federal funds wire from Paine Webber Account no. HS E2608 to BancFirst - Insured Escrow Service
114	4/10/2000	Transfer of \$400,000 by federal funds wire from Paine Webber Account no. HS E2608 to Merrill Lynch account no. 230-63517
115	6/14/2000	Payment of \$250,000.00 from Paine Webber Account no. HS E2608 to purchase 10 shares of Dreyfus Muni Income Inc.
116	6/14/2000	Payment of \$750,000.00 from Paine Webber Account no. HS E2608 to purchase 30 shares of Muniyield Fund Inc
117	6/16/2000	Transfer of \$425,000 by federal funds wire from Paine Webber Account no. HS E2608 to Merrill Lynch Account no. 230-63517
118	8/14/2000	Transfer of \$10,000 by check number 102, payable to John Summers, from Paine Webber Account no. HS E2608
119	8/14/2000	Transfer of \$10,000 by check number 103, payable to Russell Summers, from Paine Webber Account no. HS E2608
120	8/14/2000	Transfer of \$10,000 by check number 106, payable to Justin Yeager, from Paine Webber Account no. HS E2608
121	8/14/2000	Transfer of \$10,000 by check number 107 payable to Joshua Yeager, from Paine Webber Account no. HS E2608
122	8/14/2000	Transfer of \$10,000 by check number 104, payable to Katie Summers, from Paine Webber Account no. HS E2608
123	8/14/2000	Transfer of \$10,000 by check number 105, payable to Katie Summers, from Paine Webber Account no. HS E2608
124	8/21/2000	Transfer of \$50,000 by check number 109, payable to FSJ Consultants, from Paine Webber Account no. HS E2608



125	8/23/2000	Payment of \$2,000,000.00 from Paine Webber Account no. HS E2608 to purchase 2,000,000 units of Manulife North American
126	8/25/2000	Payment of \$100,143.39 from Paine Webber Account no. HS E2608 to purchase 100,000 units of Gulf Coast Wtr Tex W/Sys Bonds
127	8/25/2000	Payment of \$103,454.50 from Paine Webber Account no. HS E2608 to purchase 100,000 units of Western Wash Univ Wash Rev Bonds
128	8/25/2000	Payment of \$105,936.25 from Paine Webber Account no. HS E2608 to purchase 105,000 units of Liberal Kans G.O. Bonds
129	8/25/2000	Payment of \$106,299.38 from Paine Webber Account no. HS E2608 to purchase 105,000 units of West Vy City Mun Bldg Rev Bonds
130	8/25/2000	Payment of \$144,743.33 from Paine Webber Account no. HS E2608 to purchase 150,000 units of Kansas City Mo Mac Rev Bonds
131	8/25/2000	Payment of \$146,644.23 from Paine Webber Account no. HS E2608 to purchase 140,000 units of Utah St Brd Rgnts/R Crss Rev Bonds
132	8/25/2000	Payment of \$160,973.55 from Paine Webber Account no. HS E2608 to purchase 155,000 units of Childress Tex Cfts Oblig Bonds
133	8/25/2000	Payment of \$197,031.39 from Paine Webber Account no. HS E2608 to purchase 200,000 units of Allen Tex Indpt Sch Dist Bonds
134	8/25/2000	Payment of \$216,271.83 from Paine Webber Account no. HS E2608 to purchase 200,000 units of Decatur Ill Fgic Bonds
135	8/25/2000	Payment of \$231,644.70 from Paine Webber Account no. HS E2608 to purchase 220,000 units of Westmoreland Cnty Pa Rev Bonds
136	8/25/2000	Payment of \$254,735.36 from Paine Webber Account no. HS E2608 to purchase 245,000 units of Tarrant Cnty Tx Hlth Fac Dev Corp Bonds
137	8/25/2000	Payment of \$258,130.75 from Paine Webber Account no. HS E2608 to purchase 250,000 units of Colorado Hlth Fac Bonds
138	8/28/2000	Transfer of \$15,677.30 by check number 111, payable to American Express, from Paine Webber Account no. HS E2608
139	8/30/2000	Payment of \$101,973.28 from Paine Webber Account no. HS E2608 to purchase 100,000 units of Harlandale ISD Texas Ref Sch Bldg Bonds
140	8/30/2000	Payment of \$256,907.94 from Paine Webber Account no. HS E2608 to purchase 235,000 units of Harlandale ISD Texas Ref Sch Bldg Bonds

141	8/31/2000	Payment of \$199,850.33 from Paine Webber Account no. HS E2608 to purchase 200,000 units of Johnson City Usd Ks G.O. Bldg Bonds
142	9/5/2000	Transfer of \$50,000 by check number 112, payable to PSY Consultants, from Paine Webber Account no. HS E2608
143	9/5/2000	Transfer of \$68,041.11 by check number 113, payable to Provident Bank, from Paine Webber Account no. HS E2608
144	9/6/2000	Payment of \$207,022.33 from Paine Webber Account no. HS E2608 to purchase 200,000 units of Oconto Falls Wis Pub Sch Dist Bonds
145	9/6/2000	Transfer of \$19,267.45 by check number 115, payable to American Express, from Paine Webber Account no. HS E2608
146	9/12/2000	Transfer of \$210,000 by federal funds wire from Paine Webber Account no. HS E2608 to Goss Garrett
147	9/13/2000	Payment of \$1,500,000.00 from Paine Webber Account no. HS E2608 to purchase 60 shares of Blackrock Inv Quality Muni Trust
148	9/19/2000	Payment of \$161,705.30 from Paine Webber Account no. HM E0123 to purchase 160,000 units of Collin Cnty Tx Util Tax bonds
149	10/5/2000	Payment of \$230,219.59 from Paine Webber Account no. HM E0123 to purchase 225,000 units of US Treasury Notes
150	10/5/2000	Payment of \$228,263.23 from Paine Webber Account no. HM E0123 to purchase 225,000 units of US Treasury Notes
151	10/5/2000	Payment of \$100,863.89 from Paine Webber Account no. HM E0123 to purchase 100,000 units of US Treasury Notes
152	10/5/2000	Payment of \$103,393.34 from Paine Webber Account no. HM E0123 to purchase 100,000 units of US Treasury Notes
153	10/5/2000	Payment of \$225,600.25 from Paine Webber Account no. HM E0123 to purchase 225,000 units of US Treasury Notes
154	10/5/2000	Payment of \$100,592.38 from Paine Webber Account no. HM E0123 to purchase 100,000 units of US Treasury Notes
155	10/5/2000	Payment of \$75,751.65 from Paine Webber Account no. HM E0123 to purchase 75,000 units of US Treasury Notes
156	10/5/2000	Payment of \$154,103.92 from Paine Webber Account no. HM E0123 to purchase 150,000 units of US Treasury Notes
157	10/12/2000	Payment of \$95,035.87 from Paine Webber Account no. HM E0123 to purchase \$95,000 certificate of deposit from FBJ Whitehall Bk & Trst

158	10/17/2000	Transfer of \$67,837.92 by check number 124, payable to Provident Bank, from Paine Webber Account no. HM E0123
159	10/19/2000	Transfer of \$232,605.25 by federal funds wire from Paine Webber Account no. HM E0123 to Garrett Aviation Services
160	10/25/2000	Payment of \$96,837.72 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Aldine Tex 1sd bonds
161	10/25/2000	Payment of \$99,718.25 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Chattanooga Tn Elect Sys Rev bonds
162	10/25/2000	Payment of \$99,543.64 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Harris Cnty Tex Rfdg Toll Rev bonds
163	10/25/2000	Payment of \$103,231.00 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Lake Co IL Cons S/D # 50 bonds
164	10/25/2000	Payment of \$97,652.50 from Paine Webber Account no. HM E0123 to purchase 100,000 units of St Louis Mo Cop Cap Impt bonds
165	10/25/2000	Payment of \$102,947.00 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Socorro Tex Indpt Sch bonds
166	10/25/2000	Payment of \$94,952.50 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Travis Cnty Tex bonds
167	10/26/2000	Payment of \$107,819.97 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Allen Cnty Ind Jail Bldg Corp Rev bonds
168	10/27/2000	Payment of \$94,515.50 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Travis Cnty Tex bonds
169	11/2/2000	Transfer of \$150,000 by federal funds wire from Paine Webber Account no. HM E0123 to Merrill Lynch account no. 230-6351
170	11/6/2000	Payment of \$178,054.50 from Paine Webber Account no. HM E0123 to purchase 30,000 units of Enron Corp call options
171	11/7/2000	Transfer of \$536,575.18 by federal funds wire from Paine Webber Account no. HM E0123 to Chase Manhattan Mortgage
172	11/7/2000	Payment of \$95,096.67 from Paine Webber Account no. HM E0123 to purchase \$95,000 certificate of deposit from BSB Bank & Trust
173	11/13/2000	Transfer of \$150,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80178-0100
174	11/13/2000	Transfer of \$700,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80179-8100

175	11/13/2000	Transfer of \$500,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80180-1100
176	11/13/2000	Transfer of \$500,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80181-0100
177	11/13/2000	Transfer of \$150,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80182-8100
178	11/14/2000	Payment of \$100,410.83 from Paine Webber Account no. HM E0123 to purchase 100,000 units of McKinney Texas Wrwks & Rev bonds
179	11/27/2000	Transfer of \$200,000 by federal funds wire from Paine Webber Account no. HM E0123 ES to Merrill Lynch account no. 230-63517
180	12/5/2000	Transfer of \$100,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80178-0100
181	12/5/2000	Transfer of \$100,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80179-8100
182	12/5/2000	Transfer of \$100,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80180-1100
183	12/5/2000	Transfer of \$100,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80181-0100
184	12/5/2000	Transfer of \$100,000 from Paine Webber account no. HM E0123 to Paine Webber account no. HM 80182-8100
185	12/7/2000	Transfer of \$10,739.29, as part of larger transfer of \$11,740.12, by check number 153, payable to American Express, from Paine Webber Account no. HM E0123
186	12/18/2000	Payment of \$95,204.58 from Paine Webber Account no. HM E0123 to purchase \$95,000 certificate of deposit from Peoples Heritage Bank
187	12/15/2000	Transfer of \$14,850.88 by check number 154, payable to University of Notre Dame, from Paine Webber Account no. HM E0123
188	12/29/2001	Transfer of \$150,000 by check number 156, payable to FYI Realty, from Paine Webber Account no. HM E0123
189	12/29/2001	Transfer of \$350,000 by check number 157, payable to FSY Consultants, from Paine Webber Account no. HM E0123

190	12/30/2001	Transfer of \$17,321.37 by check number 159, payable to Haverford College, from Paine Webber Account no. HM E0123
191	1/11/2001	Transfer of \$33,671.91 by check number 161, payable to American Express, from Paine Webber Account no. HM E0123
192	1/14/2001	Transfer of \$11,347.50 by check number 163, payable to La Bandera Ranch, from Paine Webber Account no. HM E0123
193	04/23/2001	Payment of \$244,198.17 from Paine Webber Account no. HM E0123 to purchase 255,000 units of Allen Tex Indpt Sch Dist bonds
194	04/23/2001	Payment of \$99,816.06 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Decatur Tx Isd Uti Sch Bldg bonds
195	04/23/2001	Payment of \$100,100.67 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Barton Cnty Kans USD bonds
196	04/23/2001	Payment of \$99,613.22 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Arapahoe Libr Dist Colo C.O.P. Rev bonds
197	04/23/2001	Payment of \$99,316.06 from Paine Webber Account no. HM E0123 to purchase 100,000 units of Hurst-Euless Bedford Tex bonds
198	04/23/2001	Payment of \$110,007.92 from Paine Webber Account no. HM E0123 to purchase 110,000 units of Mansfield Texas Ww/Ss Rv bonds
199	04/23/2001	Payment of \$119,692.69 from Paine Webber Account no. HM E0123 to purchase 125,000 units of Maricopa Cnty Ariz Sch bonds
200	05/02/2001	Payment of \$129,341.68 from Paine Webber Account no. HM E0123 to purchase 110,000 units of Pflugerville Tex Cap Gty bonds
201	05/03/2001	Payment of \$98,885.78 from Paine Webber Account no. HM E0123 to purchase 100,000 units of West Ouachita Par S/D La Rev bonds
202	05/03/2001	Payment of \$98,804.00 from Paine Webber Account no. HM E0123 to purchase 100,000 units of West Ouachita Par S/D La Rev bonds
203	05/15/2001	Payment of \$105,274.72 from Paine Webber Account no. HM E0123 to purchase 100,000 units of New Braunfels Texas Isd Unltd bonds
204	5/15/2001	Transfer of \$200,000 by check number 177, payable to FYI Net, from Paine Webber Account no. HM E0123

205	6/4/2001	Transfer of \$75,000 by electronic funds transfer from Paine Webber Account no. HM E0123 to Bank of America
206	6/4/2001	Transfer of \$10,000 by electronic funds transfer from Paine Webber Account no. HM E0123 to Compass Bank
207	6/6/2001	Transfer of \$55,701.89 by automatic payment to Provident Bank from Paine Webber Account no. HM E0123
208	6/19/2001	Transfer of \$50,000 by check number 179, payable to US Treasury, from Paine Webber Account no. HM E0123
209	9/18/2001	Transfer of \$924,458.53, as part of a larger transfer of \$3,405,739.03, from Paine Webber Account no. HM E0123 to First Union Account no. 8845-9357

(Title 18, United States Code, Sections 1957, 2 and 3551 et seq.)

**COUNTS TWO HUNDRED TEN THROUGH TWO HUNDRED FIFTEEN**  
**(Money Laundering: REX SHELBY)**

63. The allegations in paragraphs 1 through 33, 40 and 56 are realleged as if fully set forth here.

64. On or about the dates listed in the chart below, within the Southern District of Texas and elsewhere, the defendant REX SHELBY did knowingly engage and attempt to engage, and did aid, abet, counsel, command, induce, procure and cause others to engage and attempt to engage in the following monetary transactions by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, to wit, the following transfers of funds generated through wire fraud and fraud in the sale of securities, which funds were derived from a specified unlawful activity, that is, wire fraud in violation of Title 18, United State Code, Section 1343, and fraud in the sale of securities in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

Count	Date	Transaction
210	2/16/2001	Transfer of \$5,409,816, as part of a larger transfer of \$5,454,737.19, from Paine Webber account no. HM E0299 to Paine Webber account no. HM E0109
211	4/2/2002	Transfer of \$800,000 by check no. 107 from Paine Webber account no. HM E0109 to Fidelity Cash Reserves account no. 2BX-812021
212	4/2/2002	Transfer of \$400,000 by check no. 108 from Paine Webber account no. HM E0109 to Fidelity Municipal Money Market account no. 2BX-812021
213	4/6/2002	Transfer of \$1,200,000 by check no. 109 from Paine Webber account no. HM E0109 to Vanguard Prime Money Market Fund account no. 9956144176 (\$800,000) and to Vanguard Federal Money Market Fund account no. 9956144176 (\$400,000)
214	4/6/2002	Transfer of \$1,600,000 by check no. 110 from Paine Webber account no. HM E0109 to Dreyfus Money Market Reserves account no. 317-0001465913 (\$800,000) and to Dreyfus Worldwide Dollar Money Market Fund account no. 762-0214600876 (\$800,000)
215	4/7/2002	Transfer of \$1,200,000 by check no. 111 from Paine Webber account no. HM E0109 to T. Rowe Price Summit Cash Reserves Fund account no. 522676398-0 (\$800,000) and to T. Rowe Price Short Term Bond Fund account no. 522676402-8 (\$400,000)

(Title 18, United States Code, Sections 1957, 2 and 3551 et seq.)

**COUNT TWO HUNDRED SIXTEEN**  
**(Money Laundering: KEVIN HANNON)**

65. The allegations in paragraphs 1 through 33 and 52 are realleged as if fully set forth here.

66. On or about the dates listed in the chart below, within the Southern District of Texas and elsewhere, the defendant KEVIN HANNON did knowingly engage and attempt to engage, and did aid, abet, counsel, command, induce, procure and cause others to engage and

attempt to engage in the following monetary transactions by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, to wit, the following transfer of funds generated through fraud in the sale of securities, which funds were derived from a specified unlawful activity, that is, fraud in the sale of securities in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

Count	Date	Transaction
216	4/12/2001	Transfer of \$3,925,022.59, as part of a larger transfer of \$4,090,448.58, from Paine Webber account no. 00728 to Charles Schwab account no. 4081-3743

(Title 18, United States Code, Sections 1957, 2 and 3551 ~~et seq.~~)

**COUNTS TWO HUNDRED SEVENTEEN THROUGH TWO HUNDRED NINETEEN**  
(2001 Insider Trading: JOSEPH HIRKO)

71. The allegations in paragraphs 1 through 33 are realleged as if fully set forth here.
72. On or about the dates set forth below, within the Southern District of Texas and elsewhere, the defendant JOSEPH HIRKO knowingly and willfully used and employed manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Section 78j(b) and 78ff. Specifically, while in possession of material non-public information regarding the technological capabilities, value,



revenue, and business performance and strategy of Enron Broadband Services, HIRKO sold shares of Enron stock as follows, generating total proceeds of \$35,212,724.00:

Count	Date	Shares	Sale Price	Gross Proceeds
217	1/23/01	100,000	\$ 78.4010	\$ 7,840,100.00
218	1/25/01	100,000	\$ 81.0000	\$ 8,100,000.00
219	1/26/01	235,032	\$ 82.0000	\$19,272,624.00

(Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNTS TWO HUNDRED TWENTY AND TWO HUNDRED TWENTY-ONE  
(2001 Money Laundering: JOSEPH HIRKO)

73. The allegations in paragraphs 1 through 33 and 72 are realleged as if fully set forth here.

74. On or about the dates listed in the chart below, within the Southern District of Texas and elsewhere, the defendant JOSEPH HIRKO did knowingly engage and attempt to engage, and did aid, abet, counsel, command, induce, procure and cause others to engage and attempt to engage in the following monetary transactions by, through or to a financial institution, affecting interstate commerce, in criminality derived property of a value greater than \$10,000, to wit, the following transfers of funds generated through wire fraud and fraud in the sale of securities, which funds were derived from a specified unlawful activity, that is, fraud in the sale of securities in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

Count	Date	Transaction
220	1/30/01	Transfer of \$2,099,605.00 by wire from Paine Webber account no. HM E0292 to Bank of America account no. 28041-15627
221	2/01/01	Transfer of \$8,245,504.57 by wire from Paine Webber account no. HM E0292 to Bank of America account no. 28041-15626

(Title 18, United States Code, Sections 1957, 2 and 3551 et seq.)

#### FORFEITURE ALLEGATIONS

75. Upon conviction of one or more of the wire fraud or fraud in the sale of securities offenses alleged in this Fourth Superseding Indictment, defendants HANNON, HIRKO, RICE, SHELBY and YEAGER each shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the properties listed in paragraph 77 below.

76. Upon conviction of one or more of the money laundering offenses alleged in this Fourth Superseding Indictment, each defendant shall forfeit to the United States pursuant to 18 U.S.C § 982(a)(1) the following property:

- a. all right, title, and interest in any and all property involved in each offense in violation of 18 U.S.C. § 1957 for which the defendant is convicted, and all property traceable to such property, including the following: (1) all money or other property that was the subject of each transaction, transportation, transmission, or transfer in violation of Section 1957, including but not limited to the properties listed in paragraph 77 below; (2) all commissions, fees and other property constituting proceeds obtained as

a result of those violations; and (3) all property used in any manner or part to commit or to facilitate the commission of those violations.

- b. A sum of money equal to the total amount of money involved in each offense, or conspiracy to commit such offense, for which the defendant is convicted. If more than one defendant is convicted of an offense, the defendants so convicted are jointly and severally liable for the amount involved in such offense.

77. The United States intends to forfeit property of the defendants including, but not limited to, the following:

- a. With respect to defendant KENNETH RICE, the following property:
- (i) Manulife annuity contract 2101902, in the name of Kenneth Rice at Sentinel Trust, account number 08-25001;
  - (ii) Real property known as 7207 Last Dollar, located in Telluride, Colorado, titled in the name of Summit Canyon, LLC;
  - (iii) a platinum, sapphire and diamond necklace, with 16 diamonds (total weight approximately 3.38 carats) and 226 sapphires (total weight approximately 15.05 carats) and a platinum, sapphire and diamond bracelet with approximately 6.65 carats of sapphires and approximately 1.68 carats of diamonds, purchased from Borsheims's Jewelry on June 15, 2000;
  - (iv) one 1995 Ferrari F355 Challenge, VIN no. ZFFPR41A2S0104478, registered to Ken Rice;
  - (v) one 2000 BMW X5, VIN no. WBAFB3348YLH02260, registered to Kenneth Rice;
  - (vi) one 2001 Ferrari 360 Challenge, VIN no. ZFFYR51800123311, registered to Ken Rice;
  - (vii) one 1999 Shelby, VIN no. 5CXSA1810XL000027, registered to Kenneth Rice; and

- (viii) one 2001 Jeep Wrangler, VIN no. 1J4FA49S91P347560, registered to Kenneth D. Rice;
  - (vii) \$219,112.03 in Ameritrade account no. E240-052859, in the name of Kenneth D. Rice and Teresa K. Rice;
  - (viii) \$313,906.13 in Bank of America account no. TX4-052400/06058489373, in the name of Kenneth D. Rice and Teresa K. Rice;
  - (ix) \$8,265.06 in cash and/or money market funds and 300,000 of Highland County FL Health Facilities Revenue Bond held in Goldman Sachs account no. 012-10733-0, in the name of Kenneth Rice;
  - (x) \$2,945,925.20 in cash and/or money market funds, a partnership interest in BBT Partners, LP based on a \$750,000 capital contribution (now worth approximately \$767,924.19), and securities identified in Attachment 1 in Sentinel Trust account no. 08-25001, in the name of the Ken and Teresa Rice Foundation;
  - (xi) \$358,870.81 in cash and/or money market funds, and securities identified in Attachment 2, in Sentinel Trust account no. 08-25000, in the name of the Ken and Teresa Rice Foundation;
  - (xii) .495% interest in Sternhill Partners I, LP, a limited partnership;
  - (xiii) Real Property known as 4531 Birch Street, Bellaire, Texas 77401, titled in the name of Kenneth D. Rice and spouse, Teresa K. Duryea Rice.
- b. With respect to defendant SCOTT YEAGER, the following property:
- (i) The contents of First Union Account no. 8845-9357, in the name of F. Scott Yeager and Susan S. Yeager, including \$12.52 in cash and/or money market funds, and securities identified in Attachment 3;
  - (ii) \$81,223.15 in cash and/or money market funds, and securities identified in Attachment 4, held in the name "Andrew J. Clark III, Attorney at Law FBO F. Scott Yeager Legal Fund" in Wachovia account no. 3429-2303;
  - (iii) \$409,285.48 in cash and/or money market funds, and securities

identified in Attachment 5 contained in Wachovia account no. 3429-2301, in the name of F. Scott Yeager and Susan S. Yeager;

- (iv) \$268,258.92 in cash and/or money market funds contained in Wachovia account no. 3429-2307, in the name of Andrew J. Clark, III, Attorney;
- (v) A 17.5% interest in the limited partnership of EOL Ranch, LTD;
- (vi) Real property known as Building site Unit 30, Replat of Trails End, Llano County, Texas;
- (vii) Real property known as 996 Indiana Creek Road, Blue River, Colorado, also known as Lot 38, Spruce Valley Ranch, Filing no. 1, County of Summit, Colorado;
- (viii) \$23,345.28 in cash and/or money market funds in Bank of America Account no. 5777666280, in the name of FYI Realty;
- (ix) \$22,629.16 in cash and/or money market funds in Bank of America Account no. 5777666293, in the name of FSY Consultants;
- (x) \$143.32 in cash and/or money market funds and securities identified in Attachment 6 contained in Charles Schwab Account no. 1033-1774, in the name of FYI Net.com, LP;
- (xi) 23,086.74 shares of Goldman Sachs Ultra-Short Duration Govt Fund, Merrill Lynch Account no. 230-63517;
- (xii) \$1,897,237.96 in cash and/or money market funds representing the sales proceeds of a 1983 Cessna Citation Airplane.

c. With respect to defendant REX SHELBY, the following property:

- (i) \$811,107.09 in Fidelity Cash Reserve account no. 2BX-812021-055, in the name of Rex T. Shelby;
- (ii) \$404,259.77 in Fidelity Municipal Money Market account no. 2BX-812021-010, in the name of Rex T. Shelby;
- (iii) the contents of Vanguard Prime Money Market account no. 09956144176-0030, in the name of Rex T. Shelby;

- (iv) the contents of Vanguard Federal Money Market account no. 09956144176-0033, in the name of Rex T. Shelby;
  - (v) the contents of Dreyfus Money Market Reserve account no. 317-0001465913, in the name of Rex T. Shelby;
  - (vi) the contents of Dreyfus Worldwide Dollar Money Market Fund account no. 762-0214600876, in the name of Rex T. Shelby;
  - (vii) the contents of T. Rowe Price Summit Cash Reserve account no. 522676398-0, in the name of Rex T. Shelby;
  - (viii) the contents of T. Rowe Price Short Term Bond account no. 522676402-8, in the name of Rex T. Shelby;
  - (ix) \$4,177,791.32 in Paine Webber account no. HM E0109, in the name of Rex T. Shelby.
- d. With respect to defendant KEVIN HANNON, the following property:
- (i) Real property known as 251 Hedwig Road, Houston, TX 77024, titled in the name of Kevin Hannon.
- e. With respect to defendant JOSEPH HIRKO, the following property:
- (i) \$506,842.03 in cash and/or money market funds, and securities identified in Attachment 7 contained in US Trust Account no. 75282700;
  - (ii) \$2,172,350.67 in Columbia Fund Account no. 141616, Columbia Daily Income Money Market Fund;
  - (iii) \$1,947,354.48 in cash and/or money market funds, and securities identified in Attachment 8 contained in Goldman Sachs account number 026-38602-9;
  - (iv) Contents of Goldman Sachs account number 026-38756-3, including securities listed in Attachment 9;
  - (v) the contents of US Trust Account no. 75272705, including approximately \$113,092.64 in cash and/or money market funds, and securities identified in Attachment 10;
  - (vi) the contents of US Trust Account no. 75282706, including

approximately \$26,941.75 in cash and/or money market funds, and securities identified in Attachment 11;

(vii) the contents of US Trust Account no. 75282707, including approximately \$41,251.83 in cash and/or money market funds, and securities identified in Attachment 12;

(viii) Real property known as Hakuli'A Phase, Phase I, Lot 182, South Kona, Hawaii, purchased for \$780,000;

(ix) Equity golf membership, The Club at Kokulia, purchased for \$150,000;

78. Pursuant to 21 U.S.C. § 853(p), as incorporated by Title 18, United States Code, Section 982(b), each defendant shall forfeit substitute property, up to the value of the amount described in paragraphs 75 and 76, if, by any act or omission of said defendant,

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, sold to or deposited with a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty.

All in accordance with 18 U.S.C. § 982(a)(1), and Rule 32.2(a), Federal Rules of Criminal Procedure.

(Title 18, United States Code, Sections 981 and 982; Title 28 United States Code, Section 2461.)

### SENTENCING ALLEGATIONS

79. With respect to each defendant charged in Counts One through Thirty-One of the Indictment:

- (a) the loss involved in the offense exceeded \$80 million;
- (b) the offense involved more than minimal planning;
- (c) the offense involved a scheme to defraud more than 1 victim;
- (d) the offense involved sophisticated means; and
- (e) the offense was committed through mass marketing.

80. With respect to Count One of the Indictment

- (a) Defendants Rice and Hirko were each leaders and organizers of a criminal activity that involved five or more participants and was otherwise extensive;
- (b) Defendants Hannon, Yeager and Shelby were each managers and supervisors and the criminal activity involved five or more participants and was otherwise extensive; and
- (c) Defendants Rice, Hirko, Hannon, Shelby, Howard and Krautz each abused their positions of public and private trust and defendants Howard and Krautz used special skills in a manner that significantly facilitated the commission and concealment of the offenses.

81. With respect to Counts Two through Fourteen of the Indictment

- (a) Defendants Rice and Hirko were each leaders and organizers of a criminal activity that involved five or more participants and was otherwise extensive; and
- (b) Defendants Yeager and Shelby were each managers and supervisors and the criminal activity involved five or more participants and was otherwise extensive; and
- (c) Defendants Rice, Hirko, and Shelby each abused their positions of public and private trust in a manner that significantly facilitated the commission and concealment of the offenses.



82. With respect to Counts Fifteen through Thirty of the Indictment:

- (a) Defendant Howard was a leader and organizer of a criminal activity that involved five or more participants and was otherwise extensive;
- (b) Defendant Krautz was a manager and supervisor and the criminal activity involved five or more participants and was otherwise extensive; and
- (c) Defendants Howard and Krautz each abused their positions of public and private trust and used special skills in a manner that significantly facilitated the commission and concealment of the offenses.

83. With respect to Count Thirty-One of the Indictment:

- (a) Defendants Rice and Hannon were leaders and organizers of a criminal activity that involved five or more participants and was otherwise extensive;
- (b) Defendants Rice and Hannon each abused their positions of public and private trust in a manner that significantly facilitated the commission and concealment of the offenses.

84. With respect to each defendant charged in Counts Thirty-Two through Eighty-Eight and Two Hundred Seventeen through Two Hundred Nineteen of the Indictment:

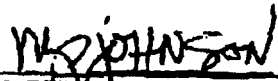
- (a) the gain is equivalent to the gross proceeds amount set forth in each particular count; and
- (b) each defendant abused their positions of public and private trust in a manner that significantly facilitated the commission and concealment of the offenses.

85. With respect to each defendant charged in Counts Eighty-Nine through Two Hundred Sixteen, and Two Hundred Twenty and Two Hundred Twenty-One:

- (a) Each defendant knew that the funds involved in the offense were proceeds of a specified unlawful activity, specifically, securities fraud, in violation of Title 15, United States Code, Section 78j(b) and 78ff; and
- (b) the value of the funds involved in the offense is set forth in each particular count.


Dated: Houston, Texas  
July 22 2004

A TRUE BILL

  
FOREPERSON

JOSHUA R. HOCHBERG  
Acting U. S. Attorney

ANDREW WEISSMANN  
Director, ENRON TASK FORCE

By:   
BENTON J. CAMPBELL  
SEAN M. BERKOWITZ  
LISA O. MONACO  
Special Attorneys, ENRON TASK FORCE

LAUREL LOOMIS  
PATRICK MURPHY  
Trial Attorneys, ENRON TASK FORCE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

-----	X	
IN RE ENRON CORPORATION	:	
SECURITIES LITIGATION	:	MDL 1446
-----	:	
This Document Relates To:	:	
	:	
MARK NEWBY, et al., Individually and	:	
On Behalf of All Others Similarly Situated,	:	
	:	Consolidated, Coordinated
Plaintiffs,	:	and Related Civil Actions
v.	:	
ENRON CORP., et al.,	:	Case No.: H-01-CV-3624
	:	
Defendants.	:	
-----	:	
THE REGENTS OF THE UNIVERSITY OF	:	
CALIFORNIA, et al., Individually and On	:	
Behalf of All Others Similarly Situated,	:	
	:	
Plaintiffs,	:	
v.	:	
KENNETH L. LAY, et al.,	:	
	:	
Defendants.	:	
-----	X	

**[PROPOSED] ORDER LIFTING DEFENDANT KENNETH RICE'S  
STAY OF DISCOVERY**

Pending before the Court is the Motion to Lift Defendant Kenneth Rice's Stay of Discovery filed by the Bank Defendants.<sup>1</sup> The Court having considered the Motion is of the opinion that it should be, and hereby is:

<sup>1</sup> The Bank Defendants include: Citigroup Inc., Citibank, N.A., Citigroup Global Markets Inc. (formerly Salomon Smith Barney Inc.) and Citigroup Global Markets Ltd. (formerly known as Salomon Brothers International Limited), JPMorgan Chase & Co., JPMorgan Chase Bank, JPMorgan Securities, Inc., Bank of America Corp., Banc of America Securities LLC, Bank of America, N.A., Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Credit Suisse First Boston LLC, Credit Suisse First Boston (USA), Inc., Pershing LLC, Merrill, Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Canadian Imperial Bank of Commerce, CIBC World Markets Corp., CIBC

ORDERED that the Motion is granted.

IT IS FURTHER ORDERED that:

1. This Court's Order staying discovery sought from Defendant Kenneth Rice (#1468), dated June 6, 2003, is hereby lifted.

2. Parties may seek written discovery from and a deposition of Defendant Kenneth Rice, effective immediately.

SIGNED at Houston, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, 2004

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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE

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Inc., Deutsche Bank AG, Deutsche Bank Securities Inc., Deutsche Bank Trust Company Americas, Lehman Brothers Holdings Inc., Lehman Brothers Inc., and Lehman Brothers Commercial Paper Inc.